

REMARKS

Summary of the Office Action

The Office Action sets forth a two-way restriction requirement and requires Applicants to elect the invention of group I (i.e., claims 1-22) or the invention of group II (i.e., claims 23-33) for further prosecution.

Discussion of the Restriction Requirement

In response to the restriction requirement, Applicants elect, with traverse, the invention of group I (i.e., claims 1-22) for further prosecution. Applicants respectfully submit that the restriction requirement is improper, in whole or in part, for the reasons set forth herein and, therefore, request withdrawal of the restriction requirement.

The Manual of Patent Examining Procedure (M.P.E.P.) recites the requirements for a proper restriction requirement. In particular, the M.P.E.P. states:

There are two criteria for a proper requirement for restriction between patentably distinct inventions:

(A) The inventions must be independent (see M.P.E.P. Section 802.01, Section 806.04, Section 808.01) or distinct as claimed (see M.P.E.P. Section 806.05 – Section 806.05(i); *and*

(B) There must be a serious burden on the examiner if restriction is required (see M.P.E.P. Section 803.02, Section 806.04(a) – Section 806.04(i), Section 808.01(a), and Section 808.02).

(M.P.E.P. § 803 (emphasis added)). These are two separate criteria that must be satisfied to support a proper restriction requirement. The fact that both criteria must be satisfied is made all the more clear by the following statement in the M.P.E.P.:

If the search and examination of an entire application can be made without serious burden, the examiner *must* examine it on the merits, even though it includes claims to independent or distinct inventions.

(M.P.E.P. § 803 (emphasis added)). Thus, if the subject matter of the pending claims is such that there would be no serious burden on the examiner to search and examine all of the pending claims at the same time, the examiner is to do so, *even if* the pending claims are drawn to independent or distinct inventions.

With respect to the present application and the outstanding restriction requirement, group I includes claims 1-22, which are directed to a fabric comprising a base portion and a pile portion, as well as a fiber made by a specified process. Group II includes claims 23-33, which are directed to a process for producing a fabric and an improvement in the process of manufacturing tufted fabrics. Applicants respectfully submit that a comparison of the claims of groups I and II makes it clear that the claims of the two groups have quite similar subject matter and overlap to such an extent that there will be no serious burden on the Examiner to search and examine all of the pending claims (i.e., claims 1-33) at the same time.

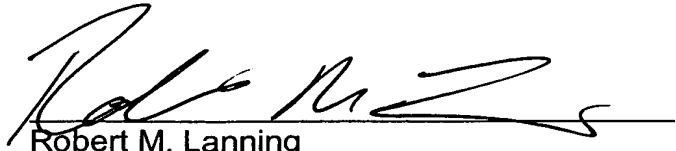
For example, please see the description of the fabric in claim 1 (of group I), which pertains to a fabric of continuous filament non-textured yarn, and note how similar it is to the description of the fabric in claims 27 and 28 (of group II). Each of these claims specifies that the fabric comprises a pile portion projecting from the base portion, the pile portion comprising a plurality of tufts arranged upon the base portion in rows. The claims further specify that the tufts provide a degree of surface coverage upon the base portion such that the rows, when viewed from an edge perspective, provide an average void area between each respective row of less than about 0.41 square millimeters at a gauge of about 32 tufts per inch. Additionally, please note the description of the fiber in claim 15 (of group I), which pertains to a fiber made by a specified process, and note how similar it is to the description of the fiber used in the process of claim 23 (of group II). In particular, each of these claims provides that the fiber is drawn while heating with a heater in a draw zone at a draw ratio of greater than 1.0 and a heater contact time of no greater than about 0.063 seconds. The claims further provide that the fiber is pre-stressed to yield a shrinkage greater than about 7% and an elongation greater than about 40%. Applicants respectfully submit that these relationships between the claims of the two groups illustrate that there would be no serious burden on the Examiner to search and examine the claims of group II at the same time as searching and examining the claims of elected group I.

Conclusion

In view of the foregoing remarks, Applicants respectfully request withdrawal of the restriction requirement, such that all the pending claims are considered together.

In re Application of Williamson et al.
Application No. 10/613,241

If, in the opinion of the Examiner, a telephone interview would expedite prosecution of the instant application, the Examiner is invited to call the undersigned.

A handwritten signature in black ink, appearing to read "Robert M. Lanning", written over a horizontal line.

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